

No. 9(I)-81/6Lab./14929.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Dalip Singh, son of Shri Jai Lal, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER,  
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

SHRI DALIP SINGH, SON OF SHRI JAI LAL (WORKMAN).

versus

THE MANAGER OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, DISTRICT SONEPAT  
(HARYANA)

Appearances:—(1) Shri Dalip Singh, alongwith Shri Chander Singh.

(2) Shri U.C. Pant alongwith Shri D.N. Gupta.

#### Arbitration Award

The above named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement, dated 29th April, 1981 under section 10A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was, published in the Haryana Government Gazette (Extra ordinary), *vide* No. ID/RTK/67/81/26798, dated 27th May 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

On receipt of the notification, notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents in support of their contentions in this case, while collective document filed by the workers representative. The pleadings of the parties gave rise to the issues as under with their consent.

- (1) Whether the workman was unauthorisedly absent exceeding 10 days (ten) from duty?
- (2) Whether the action taken by the management tantamounts to retrenchment? If so, what relief he is entitled to?

Thereafter the parties led their evidence. The workman examined himself as witness. Shri Dalip Singh deposed that he resorted to Dharna from 9th March, 1981 to 3rd April, 1981 in Nehru Place, where Head Office of the Company is located and the Dharna was within the knowledge of the management because Shri U.C. Pant (Dy. Manager Personnel) used to visit Head Office. He did not know the rules, etc. of the Company and further deposed that the Haryana Chief Minister's peon came to get the Dharna lifted on 3rd April, 1981 and assured that the workman would be taken back on duty. He accordingly reported for duty on 4th April, 1981 but was refused entry by the Chowkidar on duty. He did not enter into any correspondence with the management about his duty nor with any other authority. He added that no compensation has been paid to him by the management.

In the cross-examination, he admitted that he came to know about the letters written by the Management (recall notices written by the management). He further admitted about his stay in Jatheri Village, but denied to have received any letter (recall notices) dated 11th March, 1981 and 14th March, 1981 sent under U.P.C. He also denied the receipt of Registered A/D letter dated 2nd April, 1981 which was returned by the postal authority with the remarks 'लेने से इनकार करियस 6/4/81'. He did not try to find out the contents of the letters from the management. He further admitted that permission for leave is to be obtained but he did not write to the management individually, as the Union has sponsored a demand notice. He added that there were about 30-31 workers on Dharna and some other workers used to come and go. He conceded that individual arbitration agreement was executed with the intervention of the Labour Department.

While the management examined S/Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R.K. Dixit (Personnel Officer), Hira Singh, Head Watchman, Rajpal and Niraj Singh, watchmen, as witnesses.

Shri Pant stated that he visited H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who were dismissed, discharged or resigned etc. is given to the

Security Supervisor, to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the standing order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their un-authorised absence despite notices issued excepting 2 workers namely Jagbeer and Janardhan Ojha, who requested to take break on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand, dated 6th January, 1981 which was since been rejected and fixed by the Labour Department. — vide their letter No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice, — vide letter, dated 16th March, 1981 Exb. W-4. He further confessed to have met the Labour Minister, Haryana, when the Dy. Labour Commissioner, Sonapat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter, dated 17th March, 1981 Exb. W-5 but admitted that letters, dated 3rd April, 1981 Exb. W-6 and the Management, letter, dated 15th March, 1981 Exb. W-7, letter, dated 17th March, 1981 Exb. W-8 and letter, dated 19th September, 1981 Exb. W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to un-authorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M. after being denied the entry by the Watchman and they wanted to meet Shri U.C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met on that day. In his cross examination, he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Raj Pal and Shri Niranjana Singh, Watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instruction received from the Management and the Head-Watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the standing order. Shri Rajpal watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M. 19th April, 1981 being Sunday the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster Roll for the year 1981 wherein the word "Left" have been recorded against the name of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikram Pal, Chander Pal, Ram Chander and Bagedan Parshad had got employment with M/s Super Tools and Zandu Forgings, Bhiwadi (Raj).

In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workman, drew my attention to the illegality of the orders passed by the Management invoking clause No. 15 of the Standing order as there was no disobedience or defiance of the standing orders. He viewed that the workman were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there was no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

(1) G.T. Lad *Versus* Chemical and Fibres India Ltd. In 1979 L.J.C Page No. 290.

(2) Buckingham Company *Versus* Venkatalah LLJ 1963 page No. 638.

He also questioned the bonafide of the management in acting in harsh and perversive manner to crush the peaceful and constitutional activities of the Union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncement of the Supreme Court as under :—

(1) State Bank of India *Versus* Subramaniam 1967—1—LLJ—278.

(2) Hindustan Steel Ltd., *Versus* Presiding Officer, Labour Court, Orissa—1976.

- (3) Delhi Cloth and General Mills Co. Ltd. *Versus* Shambunath Mukherjee—1980 LLJ-page 1.
- (4) Mohan Lal *Versus* Bharat Electronics Ltd., 1981—page LIC 806.
- (5) Sontosh Gupta *Versus* State Bank of Patiala LIC, 1980, 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned Counsel of the Management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna, etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position vide their letters dated Exb. W-7 and W-8 and their stands has been vindicated by the Labour Department, Haryana, by rejecting the demand notice vide endorsement No. 38707, dated 21st August, 1981. It is, obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head watch man and Rajpal and Niranjan Singh, Watchmen. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union,—vide letter Exb. W-5.

As regard to issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuing or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd. *Versus* K. N. Jogalekar in 1953 and still holds good being the judgement of a larger Bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) D.C.M. *Versus* Shambunath Mukerjee.
- (2) State Bank of India *Versus* Subramaniam.
- (3) Hindustan Steel Ltd. *Versus* Presiding Officer, Labour Court, Orissa and other.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajalkant Mehta *Versus* Central Government, Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LLJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

- (1) From the facts and evidence it is clear that there was un-rest amongst some workers due to demands raised by their union. It is also proved that the demand raised by the Union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978, as pointed out by the Labour Department and thus rejected,—vide their endorsement No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides, it is on record that the management sent him letters (Recall notices) dated 11th March, 1981 and 14th March, 1981 under U.P.C. and admitted by him about receipt of one letter and in an indirect manner by the Union, vide their letter Exb. W-5, dated 17th March, 1981. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks "लेने से इन्कार वापिस". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. This all goes to establish that the workman remained absent, unauthorisedly from 9th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing Order.

The contention of the workman's counsel that action under clause 15 of the Standing Order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did the care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2(oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the DCM.

#### Clause No. 15 of the Certified Standing Order.

##### Discontinuation of Service

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 & 12 (b) he shall lose lien on his appointment and shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the Management."

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances length of service as well as plea of social justice, it would be in the interest of equity and Justice to award relief to the workman I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F) (b) of the Industrial Disputes Act 1947, besides his other dues lying undisbursed with the management.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four Copies) to Secretary, Haryana Government, Chandigarh, Labour and Employment Department, as required under section 17 of the Industrial Disputes Act, 1947.

J. D. MEHTA,

Sole Arbitrator.

No. 9(1)-81/6-Lab/14928.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Jal Singh son of Shri Neki Ram workmen and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER,  
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

SHRI JAL SINGH, S/O SHRI NEKI RAM (Workman)

versus

THE MANAGEMENT OF HINDUSTAN EVEREST TOOLS LTD., JATHERI, SONEPAT (HARYANA)

#### Appearances :

(1) Shri Jal Singh along with Chander Singh (authorised).

(2) Shri U.C. Pant, Dy. Manager (Personnel) along with Mr. D.N. Gupta.

## ARBITRATION AWARD

The parties named above appointed me as Sole Arbitrator in terms of arbitration agreement, dated 29th April, 1981. This agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. ID/RTK/67/81/26763, dated 27th May, 1981. The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the Management was justified ; and if not, what relief the workman is entitled to ?

On receipt of the notification, notices were issued to the parties. In response to the notices issued, the parties made their appearance, filed statement of claims, written statement as well as rejoinder. The management filed copies of document in support of their contention, while collective documents were filed for workers. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days from duty.

- (2) Whether the action taken by the management tantamounts to retrenchment. If so to what relief he is entitled to ?

Thereafter, the parties led their evidences. The workman examined himself as witness. Shri Jal Singh deposed that he was on Dharna on 20th March to 3rd April, 1981 in Nehru Place. Head Office of the Company in support of the demand raised by the Union. He further stated that he did not receive any letter during his Dharna period or after his return from Nehru Place from the Management. He added that he reported for duty on 4th April, 1981, but was stopped by the Watchman at the gate. He had never been charge-sheeted by the management during his service and has been victimised being a brother of the President of the Union and has not been paid any amount of money of his dues lying with the management. In his cross-examination, he stated that there were about 50 workers on Dharna on 20th March, 1981 and stayed there continuously including myself. He admitted that he did not write to the management about Dharna and denied about the knowledge of leave procedure and the sanction for absence to be obtained, but admitted display of one notice board in the premises. He told that there were about 30 workers at the gate on 4th April, 1981, who were refused entry by the Chowkidar Hira Lal and Raj Pal. He admitted that he did not write the management for his duty or about payment of dues after 4th April, 1981. He also admitted that his home address is correct but denied to have received letters (recall notices), dated 25th March, 1981 and 27th March, 1981 sent under UPC and also the Registered A.D. letter, dated 2nd April, 1981 returned by the Postal Authority with the remarks "लेने से इन्कार वापिस" "with remarks in Hindi sent by the Management.

Whereas the Management examined S/Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R.K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witness.

Shri U.C. Pant stated that he visits H.O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April, 1981. He met S/Shri Jagbeer Singh and Janardhan Ojha and exchanged 'Ram Ram' as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc, is given to the Security Supervisor to ensure that these workers are not allowed to enter the factory again. Only two workers namely S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half-an-hour to reach his office. He further deposed that there was intervention from the Labour Department but without any fruitful result. A copy of the standing order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their unauthorised absence despite notices issued excepting 2 workers namely Jagbeer and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand dated 6th January, 1981 which has since been rejected and filed by the Labour Department,—vide their letter No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice,—vide letter dated 16th March, 1981, Exhibit W-4. He further confessed to have met the Labour Minister, Haryana, when the Dy. Labour Commissioner, Sonapat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter dated 17th March, 1981 Exhibit W-5 but admitted that letter dated 3rd April, 1981 Exhibit W-6 and the Management letter, dated 15th March, 1981 Exhibit W-7, letter dated 17th March, 1981 Exhibit W-8 and letter dated 19th September, 1981 Exhibit W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment was due to unauthorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman, stated that he was no duty on 4th April, 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M. after being denied the entry by the Watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring them in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and met him on that day. In his cross-examination

he affirmed that he was on duty on 4th April, 1981 and denied any knowledge about Dharna by workers in Nehru Place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Raj Pal and Shri Niranjan Singh, Watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head-watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the standing order. Shri Raj Pal, Watchman, deposed that he was on duty on 19th April, 1981 from 7 A.M. to 3 P.M. 19th April, 1981 being Sunday, the factory was closed being weekly rest day. The question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time Office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster Roll for the year 1981 wherein the word "left" have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers namely Vikram Pal, Chander Pal, Ram Chander and Bhagden Parshar had got employment with M/s Super Tools and Zandu Forgings, Bhiwadi (Raj.)

In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workman, drew my attention to the illegality of the orders passed by the Management by invoking clause No. 15 of the Standing Order as there was no disobedience or defiance of the standing orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection he relied on the following awards contained in the cases cited below :—

(1) G.T. Ltd. *Versus* Chemical and Fibres India Ltd. in 1979 - LIC - page 290.

(2) Buckingham Company *Versus* Venkatiah - LLJ 1963 - page No. 638.

He also questioned the bonafide of the Management in acting in harsh and perversive manner to crush the peaceful and constitutional activities of the Union. He further challenged the action of the management that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

(1) State Bank of India *Versus* Subramaniam - 1967 - I - LLJ - 278.

(2) Hindustan Steel Ltd. *Versus* Presiding Officer, Labour Court - 1976 - LIC - 766.

(3) Delhi Cloth & General Mills Co. Ltd. *Versus* Shambunath Mukherjee - 1980 - LLJ - Page 1.

(4) Mohan Lal *Versus* Bharat Electronics Ltd. - 1981 - Page - LIC - 806 & Others.

(5) Santosh Gupta *Versus* State Bank of Patiala Ltd., 1980 - 687.

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the Management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the Management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorized absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, Period of Dharna etc. have different versions and thus cannot be accepted that a group of workers i.e. 31 or so was constantly on Dharna. He refuted the allegation of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position—vide their letters, dated Exhibit W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice—vide endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all

absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witness statements of S/Shri Hira Singh, Head Watchman and Rajpal and Niranjan Singh, Watchman. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhar Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the Management on hunger strike/Dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the Management have been admitted by the Union,—vide letter Exhibit W-5.

As regards issue No. 2 he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the Management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuing running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co., Ltd. Versus K.N. Jogalekar" in 1953 and still holds good being the judgement of a larger Bench. He further viewed that judgement in the following cases, as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

(1) D.C.M. Versus Shambunath Mukherjeel.

(2) State Bank of India Versus Subramaniam.

(3) Hindustan Steel Ltd. Versus Presiding Officer, Labour Court, Orissa.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta Versus Central Government, Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment—1980—LLJ- 336 (Bombay). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of industrial dispute act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :

- (1) From the facts and evidence it is clear that there was un-rest amongst some workers due to demand raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlement, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—vide its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the Management sent him letters (Recall notices), dated 25th March, 1981/27th March, 1981 under UPC and admitted about receipt of letters in an indirect manner by the Union, vide their letter dated 17th March, 1981 Exhibit W-5. More so the management did sent Registered A/D letter which was returned by the Postal Authorities with remarks   
नेने से इन्कार वापस.

The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the Management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 20th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management under clause 15 of the Standing Order.

The contention of the workman counsel that action under clause 15 of the Standing Order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts the affirmation of "recall notice" issued to him by the Management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for his disregard of the Standing Order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the D.C.M.

**Clause No. 15 of the Certified Standing Order Discontinuation of service :**

If a workman remains absent for a continuous period of ten days without seeking permission of the management or giving intimation under standing orders 12 & 12(b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. Thus I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

No order for cost.

Dated :

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to Secretary, Haryana Government, Chandigarh, Labour & Employment Departments, as required under section 17 of the Industrial Disputes Act, 1947.

J. D. MEHTA,  
Sole Arbitrator.

No. 9(I) 81/6 Lab-14930. - In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Suresh Kumar, son of Raje Ram workman and the management of M/s Hindustan Everest Tools Ltd., Jathori Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER, HARYANA, PRESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

Shri Suresh Kumar, son of Raje Ram

.. (Workman).

*Versus*

The Management of M/s. Hindustan Everest Tools Ltd., Jathori, Sonapat.

*Appearances :-* 1. Shri Suresh Kumar alongwith Shri Chander Singh.  
2. Shri U.C. Pant alongwith Shri D.N. Gupta.

### ARBITRATION AWARD

The above named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 29th April, 1981 under section 10 A (3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (Extraordinary), vide No. 1D/RTK/67/81/26812, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to.

On receipt of the notification, notices were issued to the parties. The parties made their appearances filed their statement of claims, the written statement as well as rejoinder. The management filed copies of documents in support of their contentions, while the documents were collectively filed by the union without being written by any individual workman. The pleadings of the parties gave rise to the following issues which were framed with their consent :—

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days (ten) from duty.
- (2) Whether the action taken by the management tantamounts to retrenchment. If so, to what relief he is entitled to.



The parties produced their evidences. The workman examined himself as witness. Shri Suresh Kumar deposed that he remained on dharna during the period from 9th April, 1981 to 2nd April, 1981 along with two hunger strikers namely S/Shri Jagbeer Singh and Janardhan Ojha in Nehru Place, New Delhi, and stayed there during this period being a member of the union of which Shri Sube Singh is President and Shri Ramchander is General Secretary. However, he stated that he did not receive any letter of the management during this period and have no knowledge about the rules and regulations/standing orders nor the management have guided him about it. He added that he went for duty on 4th April, 1981 after lifting the Dharna but was stopped by the Chowkidar though I waited till 12.00 noon. He identified the photograph of S/Shri Jagbeer Singh and Janardhan Ojha, Shri Janojaz and the Finance Minister of Haryana taken at Nehru Place New Delhi Exb. W-1. In his cross-examination he admitted his postal address as correct but denied to have received letter dated 11th March, 1981 and 12th March, 1981 sent by the management under U.P.C. Similarly he denied to have received the Registered A/D letter dated 2nd April, 1981 returned by the Postal authorities and read the contents written by the postman on 10th April, 1981 on the returned envelope in Hindi "आपका पत्र बार बार घर जाने पर जानबूझकर नहीं मिलता लेने से इनकार ज़रूर है". He also denied to have received letter dated 14th April, 1981 sent under Registered cover by the management. He admitted to have submitted application for employment and identified his signature on application form dated 11th February, 1977 wherein the acceptance of the standing orders have been laid-down. He pleaded ignorance about the same being written in English. He admitted that no worker can be absent from duty without authorised sanction and also the receipt of leave books from the management. He, however, denied to have received letter dated 4th December, 1978 and 16th November, 1980 and did not recognize his signatures on these letters. He told that he did not know the name of the Chowkidar who refused entry after getting instructions from inside. He admitted that he did not write to the management about keeping him out wrongfully and not taking him back on duty. He did not remember the exact date and the photograph Exb-W-1 taken. Nor he made any request for retrenchment compensation to the management.

While the management examined S/Shri U.C. Pant, Deputy Manager (Personnel) Shri R.K. Dixit (Personnel Officer) Shri Hira Singh, Head watchman and M/s. Rajpal and Niranjan Singh, Watchmen, as witnesses, whose recorded statement are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workman assailed the action of the management on the ground that there was no dis-obedience or defiance of the standing orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workman was on peaceful agitation following in Gandhian principles for acceptance of their justified demands and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking of his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :—

- (1) G.T. Lad—*Versus*—Chemical and Fibres India Ltd., 79—LIC P. No. 290.
- (2) Buckingham Co. —*Versus* Venkatiah 1963—LLJ P. No. 638.

He also questioned the bonafide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court, *Viz* State Bank of India—*versus*—Subramaniam—and Hindustan Steel Ltd.,—*Versus*—Presiding Officer, Labour Court etc. He accordingly pleaded that the management while not observing the condition precedent to retrenchment committed illegality, thus the workman is entitled to reinstatement with full back-wage.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on dharna excepting his lone statement. The number of workmen on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers i.e., or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position vide their letters dated Exb-W-7 and W-8 and their stand has been indicated by the Labour Department, Haryana by rejecting the demand notice,—vide endorsement No. 38707 dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union vide letter Exb. W-5. As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of five Judges of the Supreme Court in a case

"Barsi Light Railway Co. Ltd. *versus* K.N. Jogalekar in 1953 and still holds good being the judgement of a larger bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case :—

- (1) D.C.M. *versus* Shambunath Mukherjee.
- (2) State Bank of India *versus* Subramaniam and others.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LLJ 336 (Bom.). He accordingly pleaded that the "surplusage" for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their Union. It is also proved that the demands raised by the Union are not considered fit for any action in view of subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981. The workmen has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides, it is on record that the management sent him letters (recall notices) under UPG and admitted in an indirect manner by the Union,—*vide* their letter dated 17th March, 1981 Exb. W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks "प्रत्येक बार बार घर जाने पर जान बुझकर नहीं मिलता इस लिये लेने से इनकार". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported for duty on 19th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 2nd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of recall notices issued to him by the management and deliberately ignored by him. Nor the plea of *mala fide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the standing order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Disputes Act 1947, means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the D.C.M.

**Clause No. 15 of the Certified Standing Order :**  
**Discontinuation of service :**

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) he shall loose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 (fifteen) days wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated the 21st November, 1981.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, under section 17 of the Industrial Disputes Act, 1947 for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,  
Sole Arbitrator.